ENFORCEMENT CONFIDENTIAL

LITIGATION REFERRAL COVER PAGE

REGION: 5

COURT: United States District Court for the Southern District of Illinois

ACT: CERCLA Section 107

SITE NAME: Sauget Area 1, Site G
St. Clair County, Illinois

EPA I.D. NO.: ILD 981 953 623 (CERCLIS Id. No.)

PROPOSED DEFENDANTS: Industrial Salvage & Disposal, Inc./
Sauget & Company
Paul Sauget
Monsanto Chemical Company/Solutia, Inc.
Mobil Oil Corporation
Cerro Copper Products Company
Harold Wiese
Moto, Inc.

REGIONAL CONTACTS:

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1.0 SYNOPSIS OF THE CASE

This referral requests initiation of litigation to recover response costs incurred in connection with the 1995 removal action at Sauget Area 1, Site G ("Site"), an unlined inactive landfill containing high levels of polychlorinated biphenols ("PCBs") and numerous other hazardous substances. The removal action included assessing contamination at the Site, consolidating contaminated soil and waste from on (and off) the Site, solidifying oil and other liquid wastes present there and placing a temporary soil cover over the landfill. This work was performed as a fund lead removal action by the United States Environmental Protection Agency ("EPA") and government contractors pursuant to Section 106(a) of CERCLA. EPA approved a fund lead removal action to address the release or threatened release of hazardous substances into the environment caused by the presence of contamination at the Site's surface and due to air emissions and releases associated with spontaneous combustion of wastes at the Site.

Site G is one of twelve suspected uncontrolled hazardous waste sites in the Sauget/Cahokia area which have been subject to historic waste dumping activities by Sauget Area industries (see Attachment A, Sauget Map). Site G is located next to a body of water aptly named Dead Creek, which also has served a historic repository for Sauget area wastes. Due to the pollution present

there, Site G over the years has been subject to episodes of spontaneous combustion. Pursuant to an EPA response action, the Site was fenced in 1988 by three potentially responsible parties (PRPs), Monsanto Chemical Company (now Solutia, Inc./hereinafter "Monsanto"), Cerro Copper Products Company ("Cerro"), and Wiese Planning and Engineering ("Wiese Engineering") to prevent access and to stop intermittent dumping.

In 1994, the Site spontaneously combusted on more than one occasion. Local firefighters flooded the Site with water to attempt to put out the fires. This action had the effect of spreading Site contamination into Dead Creek via the water run-off. Government assessment efforts found that the combustion of Site G chlorinated wastes, namely PCBs, resulted in dioxin and furan formation (see Attachment B, ATSDR Health Report). Dioxins are among the most toxic substances known to man. It was at this time that EPA documented the need for removal activities at Site G (see Attachment C, Action Memorandum). Efforts to reach agreement with PRPs Monsanto, Cerro, and Wiese Engineering on the terms of a removal action Order on Consent failed and EPA initiated a time critical removal action on March 20, 1995. The removal action was completed and the removal action team demobilized in August 7, 1995 (see Attachment D, Site POLREPs).

2.0 SIGNIFICANCE OF REFERRAL

There are viable PRPs that should be pursued for the recovery of EPA's response costs so that the Superfund can be reimbursed and the funds made available to clean up other hazardous waste Sites. The Sauget Area Sites are part of the Gateway Geographic Initiative Area, a geographic region to which significant resources are directed to address severe contamination. The Gateway Area includes East St. Louis, Sauget, Granite City, Belleville and surrounding areas.

Sauget Area 1, Site G is closely related to other Sauget Area Sites. Specifically, the principal generator of the wastes found at Site G (Monsanto) has liability at other Sauget sites, particularly sites H and I in Area 1 and Sites R and Q in Area 2. The linkage between these sites and Monsanto is evidenced primarily by the presence at each of high levels of chlorobenzene, chlorophenols, chloroanilines and PCBs. These are Monsanto wastes, as explained in further detail in this report. Additionally, Leo Sauget (now deceased) and his son Paul Sauget and their corporation Sauget & Company (now dissolved) owned and/or operated several landfills in Area 1, including Site G, H and I, and also hauled for local businesses, including Monsanto. Judgments against Monsanto, Paul Sauget and Sauget & Company would create favorable precedent to address pollution at other Sauget Area Sites.

3.0 STATUTORY BASIS OF REFERRAL/LEGAL THEORY OF CASE

EPA's authority to bring a cost recovery action is based upon Section 107(a), 42 U.S.C. § 9607(a), of CERCLA which provides:

> Notwithstanding any other provisions or rule of law, and subject only to the defenses set forth in subsection (b) of this Section -
>
> (1) the owner and operator of a vessel or a facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances. . . shall be liable for -
>
> (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . .

Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines the term "facility" as:

> (9) The term 'facility' means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works) well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be

> located; but does not include any consumer product in consumer use or any vessel.

EPA's authority to respond to the conditions which were present at the Site is provided in Section 104(a)(1), 42 U.S.C. § 9604(a)(1), which states:

> Whenever (A) any hazardous substance is released or there is a substantial threat of such release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial actions relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.[1]

The United States District Court for the Southern District of Illinois has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613. The claim to be asserted arises from property located in the district and the release and threatened release of hazardous substances occurred in this district. Venue is therefore proper in the district pursuant to 42 U.S.C. § 9613(b).

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[1] This authority has been delegated to the U.S. EPA Administrator by Executive Order 12580 and re-delegated to U.S. EPA Regional Administrators by U.S. EPA delegation 14-6.

4.0 DESCRIPTION AND HISTORY OF THE SITE

The Sauget Area Sites are located in west-central St. Clair County, Illinois, directly across the Mississippi River from St. Louis, Missouri. The Sauget Area Sites consist of a number of former municipal and industrial waste landfills, surface impoundments, lagoons, surface disposal areas, and past excavations thought to be filled or partially filled with hazardous and solid wastes. The Sauget Area Sites are grouped into two geographic categories, Sauget Area 1 and Sauget Area 2. Sauget Area 1 comprises the Dead Creek segments A through F and adjacent landfill sites G, H, I, L, M and N. Sauget Area 2 comprises landfill sites 0 through S (see Attachment E, Areas 1 and 2 Map). The Sauget Area 2 Sites are located in closer proximity to the Mississippi River and are generally the more recently filled landfills.

This cost recovery litigation report documents the case for cost recovery for stabilization measures taken at Sauget Area 1, Site G. A cost recovery referral relating to a different but related site, Sauget Area 2 Site Q, was referred to DOJ on February 23, 1998.

Site G is a former disposal area approximately 5 acres in size located in Sauget, Illinois. The Site was owned and operated as a landfill by Mr. Leo Sauget (now deceased), from approximately 1952 until 1966. The Site is bordered by Queeny

Avenue to the north, Dead Creek to the east, a cultivated field to the south, and by Wiese Engineering to the west. Site G is located adjacent and to the west of Sauget Area 1 Site H and diagonally and to the southwest of Site I. Leo Sauget owned all of these sites (Sites G, H and I) during the periods of their operation. Anecdotal evidence indicates that Mr. Sauget's land filling operations started in the 1930s and were open to all of the local industries. At this time, the area was named "the Village of Monsanto" after the dominant business in the area. It was renamed "the Village of Sauget" later in the mid-1960s at the time Leo Sauget was installed as mayor.

Chronologically, Leo Sauget's land filling operation in Area 1 started with Sites I and H (1931 to 1957) and ended at Site G (1952 to 1966 [although intermittent dumping occurred until 1988, when the Site was fenced]). Historical aerial photos show that waste land filling activities at Sites H, I and G occurred concurrently during the period from 1952 to 1957. Thus, even though these Sites carry different letter designations (created by the Illinois Environmental Protection Agency (IEPA)), it is not inaccurate to characterize the three sites as part of one large long-standing land filling operation owned and operated by Mr. Leo Sauget and his son, Paul, through their companies. The sites carry different letter designations because of the artificial and natural boundaries which lie between them (Sites I

and H: Queeny Avenue; Sites H and G: Dead Creek), not because they are distinct landfills with substantial distinguishing characteristics.

Prior to the removal action conducted by EPA in 1995, Site G consisted of scattered corroded drums placed on cinder/fly ash cover material. The Site also contained in its eastern portion two pits filled with oily tar-like waste. Boring logs from Site G reveal 3 to 12 feet of fill material overlying 15 to 25 feet of waste (see Attachment F, EPA Removal Action Report) The maximum depth of waste was noted at 36 feet. Based on the depths and thickness of the waste along with horizontal distances between borings, a total volume of approximately 60,000 cubic yards of waste and contaminated fill is estimated to be present in the subsurface at Site G.

The primary drinking water source for nearby residences is from a water intake along the Mississippi River at River mile 181, approximately 3 miles north (upstream) of the Sauget Area Sites. Although the majority of residents in the area utilize public water supplies for drinking water, many residents to the south of the Sauget/Cahokia area rely on private well supplies. A review of Illinois Department Public Health files indicated that at least 50 homes in the general area have active wells that are used for drinking water and/or irrigation of gardens.

Two separate rural areas, near East Carondolet and Schmids Lake, rely entirely on groundwater supplies for drinking water. Both areas are located outside of the distribution areas for public water supply systems.

The nearest private well used for drinking water is located approximately 1/4-mile south of Site L, at 102 Judith Lane. Although this well is mainly used to water a garden, one of the owners often drinks the water from the well.

Based on available information, other than the use of private wells for watering gardens, irrigational use of groundwater is limited to three wells in the Schmids Lake - East Carondolet area. Approximately 400 acres of farmland are irrigated by these wells. Additionally, over 8 industrial wells are located within a 3-mile radius.

The land immediately surrounding the Site is used primarily for industrial purposes. Commercial activities are located northeast of the Site. Cerro and Monsanto are located directly north of the Site. The small residential area is approximately 600 feet west of the Site, and a larger residential area is located about .5 miles southeast from the Site adjacent to the downstream segments of Dead Creek. The small residential area contains three homes, with two of the residents owning portions of Site G (the Hankins sisters). In the larger area there are approximately one hundred homes, fifty of which border Dead

Creek. The total population of the larger area is estimated to be four hundred.

According to aerial photographs of the area, initial activities at Site G in particular were noticed in 1952. By the late 1970s, there is no longer evidence of organized systematic disposal activities. It is thought that organized landfilling operations at Site G ended at the time of Leo Sauget's sale of the property to Harold Wiese in 1966, with intermittent "midnight" dumping by unknown parties occurring thereafter until the fencing of the property.

A number of investigations have taken place at Site G. In October of 1984, IEPA conducted inspections to determine the scope of cleanup work required at the Site. Analytical results of samples taken from the subsurface soil samples on-Site revealed a variety of organic compounds. Ecology & Environment, Inc. (E&E), under an IEPA contract, conducted an Expanded Site Investigation of the Sauget Area Sites from 1985 to 1987. Note that this investigation documented the condition of the Site prior to EPA's removal action. Results from the investigation concerning Site G are summarized below (see Attachment G, E & E Report).

A magnetometry survey at Site G showed that major magnetic anomalies covered most of the Site north of the ridge located near the southern boundary of the Site, indicating that ferrous

metal objects may be buried throughout the disposal pit. Numerous open and decayed drums were observed along the east, south, and west borders of the Site.

The majority of waste material at Site G is presently below the water table, which averages 11 feet below ground surface. Waste materials were also found at the surface, particularly in the eastern half of the Site, where two oily tar disposal areas were located.

Analysis of surface soil samples from Site G indicated surficial contamination across most of the Site. Of the 43 samples submitted for analysis, only one sample showed no detected concentrations of organic contaminants. The remaining samples contained total organic concentrations ranging from 0.2 mg/kg to over 74,000 mg/kg. All surface soil samples were collected from the surface to a depth of 6 inches.

Twelve volatile organic compounds were detected in surface soil samples from Site G. The most frequently detected volatile organic contaminants were toluene, chlorobenzene tetrachloroethene, benzene, ethylbenzene, and xylene.

Semivolatile organics were detected in 33 of the 43 surface soil samples from Site G. The highest concentrations of semivolatiles included 22,000 mg/kg of 1,4-dechlorobenzene and 21,000 mg/kg of pentachlorophenol. Pentachlorophenol was detected in 14 samples, benzo(a)pyrene was detected in 13

samples, and pyrene was detected in 12 samples. The highest concentration of benzo(a)pyrene was 22 mg/kg.

Analysis of the 43 surface soil samples from Site G revealed the presence of PCBs in 40 samples, and the pesticide degradation product 4,4'-DDE in five samples. Three PCB congeners were detected in the samples, including Aroclor 1248, Aroclor 1254, and Aroclor 1260. Six surface soil samples contained PCB concentrations greater than 1,000 mg/kg. The highest PCB concentrations contained 24,000 mg/kg of Aroclor 1248, 29,000 mg/kg of Aroclor 1254, and 21,000 mg/kg of Aroclor 1260. Of the five samples in which 4,4'-DDE was detected, the highest concentration was 0.29 mg/kg. Octachlorodibenzo(b,e)dioxin (OCDD) was detected in three samples, with a maximum concentration of 130 mg/kg detected.

No 2,3,7,8-TCDD (dioxin) was detected in two composite surface soil samples taken from Site G prior to EPA's removal action. Later, however, high levels of dioxins were found in sampling during EPA's removal action after the Site fires were put out. It is suspected that high levels of dioxin were primarily created by the PCB combustion at the Site. One area off the Site, however, contained high levels of dioxin in an area <u>not</u> burned, indicating dioxin may have been dumped on to the Site as well.

Analysis of the 43 surface soil samples from Site G revealed elevated levels of antimony, arsenic, barium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, silver, vanadium, zinc, and cyanide. Cyanide was detected in 18 samples, with a high concentration of 22 mg/kg. Mercury was detected in 38 samples, with a high concentration of 22 mg/kg.

Analysis of the 12 subsurface soil samples from nine borings at Site G revealed the presence of organic and inorganic contaminants in 11 samples. These results show subsurface contamination across the entire Site to a depth of a least 36 feet. Waste material was seen in borings at depths ranging from approximately 5 feet to 36 feet. Analysis of three samples collected from the waste material showed high levels of organic contaminants. The most frequently detected organics were chlorobenzene (9 samples), tetrachloroethene (8 samples), benzene (7 samples), naphthalene (7 samples), and Aroclor 1260 (6 samples).

Total organic concentrations in subsurface soils ranged from 0 to 10,000 mg/kg, located in the east-central portion of the Site. The highest concentrations of contaminants detected were 540 mg/kg of chlorobenzene, 5,400 mg/kg of napthalene, 4,800 mg/kg of pentachlorophenol, and 4,400 mg/kg of Aroclor 1260. A total organic concentration of 970 mg/kg was detected in a sample from a depth of 35 to 40 feet. This sample consisted of visibly

stained sand below waste material. A sample collected at a depth of 20 to 30 feet also consisted of stained sand below waste material. This sample had a total organic contaminant concentration of 1,500 mg/kg. The most highly contaminated samples had total organic contaminant concentrations of 10,000 mg/kg and 2,400 mg/kg. Both of these samples consisted of waste material and soil from a depth of 10 to 25 feet.

As a result of the high levels of contamination found on the surface at Site G, and initiation of an EPA response action, Monsanto, Cerro, and Wiese Engineering contributed money towards the construction of a chain-link fence around the Site in order to restrict access to the general public. The construction was completed with U.S. EPA oversight in 1988.

In 1994, the fires occurring on the Site renewed interest in conducting additional removal actions at Site G. As indicated above, the EPA sampling, which was conducted on May 27, 1994, found dioxin present on and off the site (137 ppb, on-site; 21 ppb, off-site). The dioxin levels found exceed the recommended clean up levels of 1.0 ppb and 10 ppb for residential and industrial areas, respectively. In addition, May 27, 1994, sampling revealed high levels of PCBs (15,000 ppm), endrin (190 ppm), naphlalene (5,200E ppm), pentachlorophenol (280J ppm), phenanthene (340J ppm), 4-chloroaniline (1,700 ppm), 2,4,6-

trichlorophenol (200J ppm), and n-nitro-so-diphenyl-amine (200J ppm).

On June 6, 1994, three days after the fire was extinguished by the local fire department, EPA personnel collected air samples. Smoldering hot spots were noted during this sampling. On-site sample data revealed contaminant concentrations of acetone (87 ppb), 2-butanone (30 ppb), benzene (130 ppb), toluene (2.1 ppb), ethylbenzene (3.0 ppb), total xylenes (14 ppb), and 1,2,4- trichlorobenzene (35 ppb) (see Attachment H, Affidavit of Sam Borries).

A title search prepared by an EPA contractor for Site G indicates that Site G is divided into six separate parcels. These parcels are of land owned, individually, by Cerro Copper Products Company, Harold Wiese, Emily Hankins, Anthony Hankins, Moto, Inc., and Queeny Properties, Inc. (see Attachment I, Title Search for Site G).

After the failed attempt to reach agreement with the PRPs, EPA, Region 5, approved the fund lead removal based on a lack of documentary evidence of PRP liability at the Site. The removal action completed by Region 5 mitigated threats posed by the presence of hazardous material on Site by removal/consolidation of all surface vegetation and debris; solidifying oils and liquid wastes, stockpiling and sampling of soils adjacent to the Site and surrounding the exposed and buried drums on Site;

consolidation of all contaminated drums, solid waste, soils (including PCB and dioxin contaminated soils from outside of the Site fence-line) and non-hazardous materials; backfilling and covering excavated area with appropriate material, and covering the area with a temporary soil cap. The removal action was completed on August 7, 1995, when the Site equipment and personnel were demobilized (see Attachment D, POLREP #15).

This referral seeks to recover the costs incurred by the Agency from the responsible parties connected to the Site. The Agency's costs for the 1995 Removal are approximately $615,618.97 (see Attachment J, Itemized Cost Summary).

5.0 STATUS OF CLEANUP PROCESS

At Site G, EPA: 1) excavated and consolidated about 15,000 yards of on-site contaminated soil; contaminated soil from the nearby Wiese Engineering parking lot and Hankins property; and gravel and soil from alongside Queeny Avenue, on top of the landfill; 2) stabilized and solidified 1,200 yards of oil pit material to prevent future movement off-site and to provide a firm base for the landfill cover; 3) covered the excavated areas with 18 to 24 inches of clean soil; and 4) seeded the area to restore the vegetative cover and control erosion. No further spontaneous combustion of Site wastes has been reported, although the threat of combustion from remaining surficial unconsolidated wastes and oil still exists.

The Sauget Area 1 Sites are currently proposed for listing on the National Priorities List ("NPL"). Currently, EPA Headquarters is responding to comments received on the notice of the proposed listing and the Sauget Area 1 Sites are not yet listed on the NPL. Concurrently, IEPA is negotiating with Solutia, Inc. (the Monsanto spin-off corporation which acquired Monsanto's chemical production business) on RI/FS options for Dead Creek and Area 1 Sites. EPA has recommended a negotiation deadline of June 30, 1998, for that effort. After that date, EPA plans to take over enforcement lead for Dead Creek and the Sauget Area 1 Sites.

6.0 NATURAL RESOURCE DAMAGE CLAIM

No natural resource damage claims have been identified to date. U.S. EPA is in the process of issuing a notification letter to the Trustees for the Site.

7.0 PRIMA FACIE CASE, LIABILITY, AND DESCRIPTION OF DEFENDANTS

7.1 Prima Facie Case

In order to establish a prima facie case for liability in a cost recovery action, the following elements must be established:

1. A release or threatened release...
2. Of a hazardous substance...
3. From a Facility...
4. Defendants are responsible parties under CERCLA Section 107;

5. The release caused the Agency to incur response costs.

7.2 Release or Threatened Release

CERCLA § 101(22) defines "release" as follows: any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

Releases of hazardous substances have occurred at the Site due to chemicals leaking, spilling, escaping and leaching from drums disposed of at the facility. As described in section 4.0 History of the Site, contamination of both the soil and sediment at the Site has been extensively documented. This constitutes a release or substantial threat of release into the environment pursuant to Section 104 of CERCLA. 42 U.S.C. §9604(a)(1).

7.3 Of a Hazardous Substance

Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), describes "hazardous substances" as any element, compound, mixture, solution, or substance designated pursuant to § 102 of CERCLA and various provisions of other laws. The substances detected at the Site, namely PCBs, dioxins, benzenes, chlorobenzenes, chlorophenols, and chloroanilines and a host of other materials, are listed as hazardous substances in 40 C.F.R. § 302.4.

7.4 From a Facility

Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines "Facility" as any building, Site, or area where hazardous substances are deposited, stored, placed or otherwise come to be located. The Site is a Facility because hazardous substances have been deposited there.

7.5 Defendants are Responsible Parties

Section 107(a) of CERCLA, 42 U.S.C. §9607(a), defines four classes of liable parties, including the owners and operators of a facility, past owners and operators at the time of disposal, generators of hazardous substances released at the Site, and transporters of hazardous substances to the Site. The proposed defendants are liable as owners/operators, generators, and transporters. The liability of the proposed defendants is discussed below.

A. Current/Past Owners

1. Cerro Copper Products Company, Post Office Box 66800, St. Louis, MO 63104

   Facility Address: 3000 Mississippi Ave., Sauget, IL 62206.

Cerro has owned a portion the Site since 1957. Cerro was mailed a general notice of potential liability letter from EPA on December 20, 1994.

2. Harold Wiese, 1445 Woodson Rd., St. Louis, MO 63132.

Mr. Wiese has been an owner of the Site since 1966. Wiese Engineering, Inc. was mailed a general notice of potential liability letter from EPA on December 2, 1994.

3. Moto, Inc., 721 W. Main Street, P.O. Box 122, Belleville, IL 62202.

Facility Address: 3120 Mississippi Ave., Sauget, IL 62206.

Moto, Inc. has been owner of the Site since 1954. Region 5 is currently checking into rumors that Moto, Inc. recently sold this parcel to another party. Moto, Inc. was mailed a general notice of potential liability letter from EPA on December 20, 1994.

4. Myrtle and Emily Hankins, 3110 Mississippi Avenue, Sauget, IL 62202.

Since 1960, the Hankins sisters have been owners of the Site. The Hankins sisters were not mailed general notices of potential liability because of their status as judgment proof and innocent landowners.

B. Operators

1. Sauget & Company/Industrial Salvage & Disposal, Inc., 2700 Monsanto Avenue, Sauget, Illinois 62206

Sauget & Company and its predecessor corporation Industrial Salvage & Disposal, Inc. ("Industrial Salvage") are potentially

liable as operators of Site G by virtue of the fact the companies' used the Site as a valuable asset of its operation. Paul Sauget received a general notice of potential liability letter on December 20, 1994, due to his capacity as the former co-director of both of the above companies. The companies were not sent specific notices because both were dissolved years ago.

According to its corporate Articles of Incorporation, Industrial Salvage was incorporated on November 5, 1959. Industrial Salvage changed its name to Sauget & Company on March 25, 1965 (see Attachment K, Articles of Incorporation). Sauget & Company was involuntarily dissolved in 1973 as a Delaware corporation and all remaining assets were distributed to MTS, Inc. A Dun & Bradstreet search revealed that MTS Inc. was no longer active as of July 1996. No further information has been located on this business.

Paul Sauget admits that he drove trucks for Industrial Salvage and at some time became the Company's secretary (see Attachment L, Paul Sauget 1994 Section 104(e) Response). The company's Articles of Incorporation indicate that Mr. Sauget was co-director of the company and later for Sauget & Company. In his response to EPA's information request, Paul Sauget states that his knowledge concerning Sites G, H and I is very limited

because he had "only limited involvement" with "the activities of Industrial Salvage with respect to these sites" and that it is his recollection that Sauget & Company was not involved in any waste disposal activities in Site G. He claims neither company hauled for Monsanto to Area 1 sites but claims no knowledge with respect to whether Industrial Salvage accepted wastes into these Sites. He admits Leo Sauget did.

The corporate charter included in Industrial Salvage and Sauget & Company's Articles of Incorporation clearly contemplate the hauling, handling, and disposal of chemical wastes in landfills:

> "To process, accumulate, treat, remove, haul and dispose of chemical waste materials....." and "to make use of landfill and other inhibitors to restrict the seepage of such chemical waste product to areas of processing...." and "to purchase, sell, acquire, own, develop, treat and dispose of all chemical and industrial waste products...."

Also, the fact that chemical wastes linked to Monsanto are in fact present in Site G help contradict Mr. Sauget's claims of the Sauget companies' non-involvement. Additionally, documents obtained from Monsanto show Monsanto used Industrial Salvage and Sauget and Company for its chemical waste hauling and disposal during the timeframe of operation of Site G. There exist hauling contracts between Monsanto and Sauget's companies that go back to

1957 (See Site Q referral). These contacts are for Area 2 Sites and no such hauling contracts or landfill operating contracts have been found for Area 1 sites. However, in a memo dated November 8, 1957, a Krummrich plant sanitary engineer documents that Leo Sauget accepted Monsanto wastes into his Area 1 sites. In the memo, Mr. Stutz acknowleges that disposal of "toxic residues, waste chemical and trash" from the Queeny and Krummrich Plants "has been a problem for a number of years." The memo goes on to say that Monsanto looked into incineration in 1950 and 1953 but that it was concluded that "dumping would be the most economical method of disposal." The memo continues:

> Arrangements were made with Mr. Leo Sauget of Monsanto Village to dump in an excavated area adjacent to the Krummerich Plant and owned by Mr. Sauget. In July of this year, Mr. Sauget notified the Krummrich Plant that he does not intend to extend the dump contract beyond the expiration date of December 30, 1957. This action was prompted by an odor nuisance which developed and also because the excavated area owned by Mr. Sauget is practically all filled.

The above documents show that Leo Sauget was involved in transporting and accepting hazardous wastes for Monsanto during the time period of operation of Site G. It also is documentation that Monsanto wastes were accepted in Sauget Area 1 sites (Sites I and H the sites referenced in the memo)(see Attachment M, 1957 Stutz Memo). Industrial Salvage was incorporated by Leo Sauget

during the time period of operation of Site G for the purpose of disposing of and landfilling hazardous wastes. Hazardous substances are documented to be present in Site G. These facts and documents indicate that the Sauget companies operated the Area 1 sites as landfills after upon their incorporation. To bolster this case the government may have to locate and depose local residents who will testify that Industrial Salvage/Sauget & Company operated Site G (see Section 7.5.D, below) in this manner.

2. Paul Sauget, 2700 Monsanto Avenue
Sauget, Illinois 62206

Paul Sauget is currently the mayor of Sauget, Illinois. Based on his former involvement with Sauget & Company and Industrial Salvage (see section 7.5.B.1, above), and pursuant to the legal precedent presented below, Paul Sauget is potentially individually liable as an operator of the Site. Mr. Sauget received a general notice of liability letter for Site G on December 20, 1994.

In the 8th Circuit's Control Data Corp. v. S.C.S.C. Corp. decision, the Court explained that an individual is liable as an operator, "not merely because of his position as a corporate officer, but because of his control of the operations. . ."

Control Data Corp. v. S.C.S.C. Corp., 53 F.3d at 937. The majority of courts today follow similar reasoning. (See Sidney S. Arst Co., v. Pipefitters Welfare Educ. Fund, 25 F.3d 417 (7th Cir. 1994); Pape v. Great Lakes Chemical Co., 1993 U.S. Dist. LEXIS 14674 (Northern District of Illinois); U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc., 810 F.2d 726 (8th Cir. 1986)).

Paul Sauget is potentially personally liable by virtue of his management and oversight over the hauling and land filling operation of this closely held corporation. As indicated by the Industrial Salvage and Sauget & Company Articles of Incorporation, Mr. Paul Sauget was a co-member of the Board of Directors of both companies from the very beginning (see Attachment K). Eventually, after the death of his father Leo in 1968, Paul Sauget oversaw all the operations of Sauget & Company. Although Site G was owned by Mr. Leo Sauget at the time at the time of disposal, it was being used as an asset of the above companies.

C. Generators.

1. Monsanto Chemical Company, 800 North Lindbergh Avenue, St. Louis, Missouri 63167 Attn: D. Michael Light (Now Solutia, Inc., 10300 Olive Blvd., P.O. Box 66760 St. Louis, MO 63166, by virtue of its purchase of Monsanto's chemical production business and agreement to indemnify Monsanto of all environmental liability).

Facility Addresses: Krummrich Plant, 500 Monsanto Ave., Sauget, IL 62206-1198; Queeney Plant, 1700 South Second Street, St. Louis, MO 63177

Although little direct evidence exists, overwhelming circumstantial evidence indicates that Monsanto is liable as a generator of hazardous waste disposed of at Site G. Monsanto was mailed a general notice of potential liability letter from EPA on December 20, 1994.

Monsanto is a Delaware Corporation, whose business included the manufacturing of chemicals until Solutia, Inc. purchased the chemical manufacturing business and the Krummrich plant in 1997. Solutia and Monsanto have an indemification agreement by which Solutia has agreed to take responsibility for all existing environmental claims against Monsanto. Based on this agreement, Solutia should be named as a defendant in this cost recovery action.

It can be argued based on circumstantial evidence that Monsanto has admitted to dumping into Site G by virtue of Notices

filed pursuant to Section 103(c) of CERCLA. CERCLA Section 103(c) requires, under threat of penalty, any person who owns of operates, or who accepted hazardous substances for transport and selected a facility at which hazardous substances are stored treated of disposed of, to notify EPA of the existence of such facility. In CERCLA 103(c) Notices filed in May of 1981, Monsanto admits transporting from the Queeny and Krummrich plants to the "Sauget (Monsanto), Illinois Landfill" located on "Falling Springs Road," "organics," "chemical, general" and "unknown" wastes between approximately "unknown to 1957" (see Attachment N, Monsanto 103(c) Falling Springs Road Notice of Hazardous Waste Site). The Queeney Notice estimates the waste amount transported as 356,000 cubic feet. The other, for the Krummrich plant, states an "unknown" amount of waste was transported.

It will be difficult for Monsanto to deny that the above referenced Notices do not refer to Sites I and H, and by implication Site G. Sites I and H are located on Falling Springs Road within close proximity to the Monsanto facility. Site G is directly adjacent to Site H. No other large landfills are located on the Road. Additionally, the "unknown to 1957" timeframe noted intersects a known period of operation of Sites H, I and G. Finally, the sites all contain "organic" and

"chemical" wastes that are particular to Monsanto operations. These facts make a case that the Section 103 Notice is an admission by Monsanto that it dumped chemical and organic wastes into Sites H, I and G.

By the same reasoning, the fact that Site R (the "Sauget Toxic Dump") contains wastes so similar to those found in Site G (see Attachment O, Site R Contents) also circumstantially implicates Monsanto for Site G wastes. Monsanto admits its responsibility for Site R Wastes in the Sauget Toxic Dump Section 103(c) Notice (see Attachment P, Sauget Toxic Dump Section 103(c) Notice).

A more direct link to Monsanto can be found by examining the types of waste present in Sites G, H and I. These sites all contain high subsurface levels of benzene, chlorobenzene, chloroaniline, toluene, 2,4-dichlorophenol, 2,4,6-trichlorophenol, pentachlorophenol, naphthalene, polycyclic aromatics, and, of course, PCBs (see Attachment Q, Table of Waste Concentrations in Sauget Sites). All of these chemicals are strongly linked to Monsanto operations. All of these chemicals were produced by Monsanto during the period of operation of Site G, and a few are considered "intermediaries", e.g., chemicals which were not sold to other businesses but rather were used only

in internal Monsanto production processes (see Attachment R, Documents Re: Krummrich and Queeny Plant Chemicals Produced During Operation of Site G). Specific examples of Monsanto "intermediary" chemicals are the chlorobenzenes, chlorophenols, and chloroanilines. The large number of exotic chemical wastes found in Site G and the large number of exotic chamical used and produced by Monsanto presents a good opportunity to "fingerprint" wastes at Site G as Monsanto wastes. Further discovery and analysis of the file is needed in this case to fully explore this opprtunity.

Due to Monsanto's former domination of the PCB market, a special case can be made linking the PCBs to the Monsanto Krummrich plant. Monsanto admits in its 104(e) response, "the overwhelming majority of PCBs were produced and sold in the USA by Monsanto." (See Attachment S, CERCLA 104(e) Response #30). Monsanto will argue that other companies which purchased PCBs from them dumped used PCBs into Site G. However, documents show Monsanto was in the habit itself of discharging and dumping thousands of gallons of PCBs into sewers and landfills during this period of time (see Attachment T, Memos Re: Monsanto PCB Production and Disposal into Sewers and Landfills). Furthermore, because of the nature of PCBs found at the Site, this argument

that the PCBs were dumped by Monsato customers is unpersuasive. Certain PCBs observed at the Site appeared to be in a solid resin state. This is how PCBs appear in the production process before being mixed or "cut" with other chemicals and turned into saleable products. For example, PCBs in their solid resin form used to be mixed with trichlorobenzene 1-2-5 to create transformer fluid, one of the most common commercial usages of PCBs. Significantly, samples showing the high PCB levels at Site G were not accompanied with high levels of trichlorobenzene 1-2-5, indicating that the PCBs did not come from transformers. Also, it is believed that PCBs were not sold by Monsanto in solid resin form. The presence of PCBs in a solid resin state therefore indicates Monsanto was the generator of PCBs at Site G.

There is direct evidence that Site G received Monsanto wastes. When EPA conducted its removal action at Site G, a long list of physical evidence was observed, photographed and stored by the On-Scene Coordinator (OSC) which implicates Monsanto and others (see Attachment U, List of Items Observed at Site G). For example, the following items were dug up and observed by the OSC which can be tied or potentially tied to Monsanto:

1. Approximately 25 empty 50 lbs. bags of "Monsanto Penta" with the active ingredients; 84% Pentachlorophenol, 12% Other Chlorophenols, 4% inert ingredients. Product is

used for preservation of wood against decay and insects. Product made by Monsanto Chemical Company, Organic Chemical Division, St. Louis, Mo.

2. Approximately 57 label stencils: Aroclor 1248, Aroclor 1260, Aroclor 1254, Dykanol-A; Glycidal Phenyl Ether, Phenyl Chlori..., Nerteen PPO, Aroclor 1262, Low Temp Element Part A, Tritetrachlorbenzene, Check for Water, ..ontar No. 3, Swan Hatley Mosbacker, PPO Dept. 246, Pyranol 1470, PCB Dept. 243 only, Trichlorobenzene, PCB.

3. Receiving Reports for Monsanto Chemical Company (the "received from" portions were filled in on some).

4. Operations Manual for "Monsanto Chemical Company, Organic Chemical Division, W.G. Krummrich Plant.

5. Steel Barrel Company receipts for the shipment of empty drums to Monsanto Chemical Company.

6. Mulligan Printing receipt, to Monsanto, 12,000 labels, "100 lbs. Monsanto Penta".

7. American Chemical Society letter to Monsanto Chemical Company, ATTN Joyce Saebens.

8. Letter from J.H. Huber, Instrument Engineering Company, to Monsanto Chemical Company, Joyce Saebens, Purchasing Dept.

9. Outbound freight receipts from Monsanto Chemical Company; Shipped Sulphuric Acid, Santolube, Muriatic Acid, Phosphorous Trichloride, Salt Cake, SantoSite, Tetracyclohexylamine, Santomerse No. 1 flake, Phenol usd, many more not recorded here.

10. Various laboratory glassware; at least one containing a Monsanto label.

Finally, a Monsanto memo written by a Krummrich official references arrangements made with Leo Sauget to dump Monsanto wastes in the excavated area adjacent to the Krummrich plant and owned by Mr. Sauget (an apparent reference to Sites H, I and/or G) (see Attachment M, Memo by C.N. Stutz, Monsanto). Paul Sauget's answer to EPA's Section 104(e) Request for Information corroborates this, stating: "With respect to Monsanto Company, on information and belief, I believe that certain metal wastes, scrap wood, iron, and other solid and liquid wastes were disposed of at these Sites" (G, H, and I) (see Attachment L).

2. Mobil Oil Corporation, 150 East 42nd Street, New York, New York 10017; Facility Address: 200 S. 20th Street Sauget, IL 62206

In its answer to EPA's 104(e) Request, Mobil maintains that it did not dump at Site G. However, waste present in certain areas on Site G are indicative of a refining operation. As mentioned, the Site contained in its eastern portion two pits filled with oily tar-like waste. During EPA's removal, the OSC observed a large volume of oil contaminated sludge and oil in unmarked drums in this area. Hazardous substances found in these drums included benzene, toluene, and xylene, which are wastes common to refinery operations. These substances were also detected in the air samples taken by EPA in this area.

Furthermore, small beads often used in refinery cracking operations were found at the site (see Attachment V, Site Photos). In its Response to the Section 104(e) Information Request, Mobil states that it used beads within its Thermofor Catalytic Cracking Unit as a catalyst (see Attachment W, Mobil Section 104(e) Response). According to Mobil, the catalyst primarily consisted of silica, and that used catalyst would contain carbon, unreacted hydrocarbons, and sulfur. EPA tested the beads on site and found they contained PAHs, a type of hydrocarbon. Paul Sauget's answer to the Section 104(e) Information Request bolsters the fact that Mobil dumped on site, particularly with regard to the tell-tale beads, stating: "with respect to the Mobil Oil Corporation, on information and belief, I believe that certain sludges and beads from the filtering operation, were disposed of at one or more of these Sites (Sites G, H, and/or I) (see Attachment L).

Finally, as with Monsanto, physical evidence implicating Mobil was found at the Site and documented by the OSC. These items were found in close proximity to the oil waste, drums and beads mentioned above:

1. Socony Mobil Oil Company, E. St. Louis; light ends analysis forms, majority are filled out with analytical results.

2. Forms from Vacuum Oil Company Inc., Lubrite Division, a subsidiary of Mobil Oil.

3. Three empty 100-lb bags labeled NALCO, National Aluminate Corporation, Chicago. Reverse side had "Shipped To: Socony Mobil Oil Company"

4. Socony Mobil Oil Company Receipts.

D. Transporters

1. Industrial Waste Salvage & Disposal, Inc./Sauget & Company, 2700 Monsanto Avenue, Sauget, Illinois 62206.

Monsanto, in the CERCLA Section 103(c) Notices filed for the Falling Springs landfill, states that it did its own hauling to the Falling Spring road landfill. However, it has been shown that Industrial Salvage/Sauget & Company transported Monsanto wastes to Sites Q and R, and operated both sites, starting upon its incorporation (see Site Q referral). The question is what involvement the corporations had with Site G. The Stutz Memo indicates that Leo Sauget "dumped" (e.g. hauled (?)) hazardous wastes for Monsanto to Sauget Sites H and I since at least the early 1950s. Industrial Salvage was incorporated in 1959, during the time period of operation of Site G. It is logical, as for Site R, that transport to and/or operation of Site G was under Industrial Salvage's name after its incorportion. The government will have to follow up on interviews with local residents and employees of Wiese Engineering to confirm that Industrial

Disposal/Sauget & Company hauled for Monsanto to the Site G landfill (see Attachment X, Memo from Paul Takacs).

7.6 Not Inconsistent with the N.C.P.

In the Action Memorandum dated September 26, 1994, the On-Scene Coordinator detailed how response activities at the Site are both cost effective and not inconsistent with the National Contingency Plan (NCP). See 40 C.F.R. Parts 300.400-300.440 (Subpart E); Action Memorandum, Attachment C.

8.0 ENFORCEMENT HISTORY

On December 20, 1994, U.S. EPA sent general notice letters to Paul Sauget, Monsanto, Cerro Copper, Wiese Engineering, and Moto, Inc. Additionally, on July 13, 1994, EPA sent information requests to Monsanto and Cerro. Later, on September 21, 1994, EPA sent information requests to the Village of Sauget and Cahokia, Paul Sauget, Wiese Engineering, Ruan Transport and Rogers Cartage. After the OSC completed the Sites G and Q removals, the Region sent follow-up Section 104(e) requests to Monsanto, Mobil Oil, Paul Sauget, Ethyl Petroleum, Big River Zinc, Sterling Steel, Amax Zinc, Midwest Rubber, Superior Equipment Company, and Clayton Chemical Company. The responses to these requests, if not attached to this referral, are available at the EPA regional office.

9.0 COST RECOVERY

9.1 Cost Summary

EPA has incurred $615,618.97 in response costs at the Site as of December 31, 1997. Attachment J is an itemized cost summary ("ICS") of these costs. The ICS includes a breakdown of EPA's payroll and travel costs, contractor costs as well as a calculation of indirect costs and interest. A complete cost documentation package is attached to the ICS.

9.2 Projected Future Costs

There are no projected future costs.

9.3 Potential Problems With Costs

There are no foreseeable problems with EPA's costs, aside from potential questions relating to the division between EPA's and IEPA's billing for the removal activities for Site G and remedial activites for Sauget Area 1.

10.0 INJUNCTIVE RELIEF

There is no need to seek any injunctive relief in this matter. However, additional removal/remedial action may be needed at Site G in the future to address any remaining threats to human health or the environment.

11.0 OTHER LEGAL ISSUES

11.1 Potential Defenses

A. Statute of Limitations

One issue that needs to be highlighted is the running of the three year statute of limitation for recovery of costs under CERCLA. The three-year statute begins to run at completion of the removal action. 42 U.S.C. §113(g)(2)(A). In this case the physical removal was completed on or about August 7, 1995 (see Attachment D, POLREP #15). If the three-year statutory period on past costs began to run from completion of the on-Site physical removal activities, then the United States' cause of action for those costs associated with that physical removal will expire on August 7, 1998.

B. Hazardous Substances

The second troublesome aspect of this case is the lack of records documenting what generator/transporter wastes were accepted at Site G. Thus, particularly Monsanto can be expected to argue, as indeed it did in its response to U.S. EPA's information request, that it disposed of only non-hazardous waste into Site G.

However, largely based on a theory of elimination and on the weight of substantial circumstantial evidence, EPA believes that

Monsanto can be proven to be responsible for the generation, transport and/or disposal of hazardous substances, specifically chlorobenzenes, chloroaniline and chlorophenols PCBs, at the Site. Additional evidence supporting this conclusion may need to be developed more fully prior to litigation through depositions or additional Section 104(e) requests.

C. Lack of Liability Evidence

This defense will be raised by all the PRPs, but it may prove particularly difficult concerning Paul Sauget. Mr. Sauget's liability will have to be proven through his actions on behalf of Industrial Salvage and Sauget & Company. Therefore, the government will have to show that these corporations were involved in transporting to and operating Site G as a landfill and that Mr. Sauget had requisite control over the corporations' affairs in these actions.

12.0 LITIGATION/SETTLEMENT STRATEGY

A. Discovery

EPA is interested in obtaining more information from Paul Sauget and former Monsanto Company officials through deposition. Such despositions would need to occur quickly, particularly with respect to Mr. Sauget, who is in poor health. Sauget's deposition would include questions regarding when operations at

Site G began and ended, the type of wastes the company handled, its hauling history for Monsanto and other companies, as well as details of Paul Sauget's personal involvement in management of Sauget & Company (and Industrial Salvage & Disposal) at the Site G landfill operations. Monsanto officials could be made to explain the CERCLA Section 103(c) Notices discussed above, as well the nature and characteristics of chemicals produced at the Krummrich plant during the operation of Site G.

Additionally, witnesses who have made statements regarding certain PRP's liability should be deposed. Thus, the Sauget & Company employees who were interviewed by U.S. EPA's civil investigator (for the Site Q case) and the Wiese Engineering employee interviewed by Paul Takacs should be deposed to preserve their testimony as to Site G as well.

More information about Mobil's disposal of wastes at Site G is needed. This information can be obtained through deposition of Mobil employees, as well as of employees of Superior Equipment, thought to be Mobil Oil's primary outside waste hauler during the period of operation of Site G.

B. Summary Judgment

The United States should be able to establish that Cerro and Harold Wiese are the current "owners" of the Site, and that Moto

was at least a owner during periods of landfill operation, on summary judgment. More information will have to be gathered to be able to show that Sauget & Company (and Industrial Salvage and Disposal) were the "operators of and/or transporters to" the Site, and that Monsanto and Mobil were generators of hazardous waste found at the Site.

13.0 OTHER IMMINENT HAZARD PROVISIONS

None involved.

14.0 WITNESSES/LITIGATION SUPPORT

14.1 Witnesses

Mr. Samuel Borries is the current OSC and will be able to testify as to the need for the response at the Site and with respect to the extent of the contamination formerly present and still present and emanating from the Site. Mr. Borries can also authenticate the photos taken of the physical evidence found on-Site.

An individual from the Superfund Accounting division will be needed to testify with respect to the cost documentation for the Site.

Mr. Paul Takacs, State Project Manager, Sauget Sites, IEPA, can testify as to the nature and characteristics of the waste found at Site G. Mr. Takacs can also help link the wastes found

at the Site to the Monsanto production processes (particularly the chlorobenezens, chlorophenols, and chloroanilines, and PCBs). An expert witness may be needed on this topic, however.

15.0 CIVIL JUSTICE REFORM EXECUTIVE ORDER

15.1 Notice and Pre-filing Negotiations

EPA has not yet sent a demand letter for EPA's past costs to the PRPs and has not started negotiations with them for its costs.

15.2 Regional Settlement Posture

EPA may be willing to settle this matter for an amount lesser that the $615,618.97 to avoid the cost of protracted litigation. Factors the Region would consider in reducing the amount include: the PRPs ability to pay, as well as any additional evidence PRPs may reveal effecting their liability at Site G.

15.3 ADR Consideration

Neither U.S. EPA nor any of the proposed defendants have proposed any ADR techniques to attempt to resolve this matter. The Region believes such tools may foster a settlement of this case if allocation of liability is put at issue.

15.4 Core Information

This case involves an administrative record which is located in the Region 5 Records Center on the seventh floor of the Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago. The index to the administrative record is attached to the Action Memo, which is attached hereto as Attachment C. A list of the proposed Defendants is included as Attachment Y. The draft complaint for the cost recovery action is attached as Attachment Z.

LIST OF ATTACHMENTS

A. Map of Scenic Sauget

B. ATSDR Health Report

C. Site G Action Memo

D. Site G OSC POLREPS

E. Sauget Areas 1 & 2 Map

F. EPA Removal Action Report for Site G

G. E & E Sample Results for Site G

H. Warrant and Affidavit of Sam Borries; Sample Results Attached

I. Site G Title Search, Parcel Map

J. Site G Itemized Cost Summary

K. Sauget & Company/Industrial Salvage Articles of Incorporation

L. Paul Sauget/Village of Sauget 1994 104(e) Responses

M. 1957 Stutz Memo

N. CERCLA Section 103(c) Notices for Falling Springs Road Landfill

O. Site R Landfill Contents

P. CERCLA Section 103(c) Notice for Sauget Toxic Dump

Q. Table of Waste Concentrations in Sauget Sites

R. Documents Re: Monsanto Krummrich and Queeny Plant Products

S. Monsanto Section 104(e) Response

T. Memos Re: Monsanto PCB Production and Disposal into Sewers and Landfills

U. OSC List of Items Observed at Site G

V. Site G Photos

W. Mobil 104(e) Response

X. Memo from Paul Takacs, IEPA

Y. List of Proposed Defendants

Z. Draft Complaint